

RTC 03-387 Attachment

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Donald Druyanoff
310 Soquel Way
Sunnyvale, CA 94085
Phone# 408-481-3616

October 3, 2003

City of Sunnyvale – Planning Division
456 W. Olive Avenue
Sunnyvale, CA 94087

RECEIVED
OCT 06 2003
PLANNING DIVISION

Attn: Christine Cannizzo – Project Planner

Re: File #2003 – 0537
Sunnyvale Community Christian Church
435 Indio Way

Dear Christine:

As you know I was at the September 22, 2003, Planning Commission meeting and strongly voiced my concerns and objections to a church going into an industrial area. My interest is that I own the building at 310 Soquel Way which is very close to 435 Indio Way. My company is the sole tenant in my building. I bought the building in 1991 and moved the company in February 1992.

Your original report to the Planning Commission had on page 5 the following comments:

As part of the initial study it has been noted that the location of the proposed church is within 500 – 1000 ft. of a research and development facility that utilized hazardous materials in considerable quantities. Several years ago a hazardous materials incident occurred at this facility which required evacuation of surrounding businesses. Although a similar incident can occur again, existing codes governing such facilities minimize the likelihood of any affect on the proposed church.

If the Use Permit for the church is approved in the proposed location, concerns regarding exposure to hazardous materials may limit the type of industrial uses that can be permitted in the vicinity in the future and the expansion of existing industrial uses in the area.

On page 9 of the report it is recommended that the Planning Commission adopt the Negative Declaration and deny the Use Permit.

Attachment 1 also states:

The applicant is proposing the location of a church in an industrial zone. The proposed use is compatible with existing businesses in the area, but it may limit possibilities for new industrial uses to move into the area and for existing industrial uses to expand as a result of risks of exposure to hazardous materials.

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The proposed use is not desirable, and will be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the Zoning District.

The proposed church and associated uses will be materially detrimental to public welfare or injurious to the property in that type of industrial uses that could occupy the neighboring tenant space will be limited because of risks of exposure to hazardous materials. In addition, there would be a parking deficiency on the site if the hours of operation for the neighboring tenant coincide with the church's peak hours of operation.

As a property owner on that block within 500 feet of 435 Indio Way, I feel very strongly that the Planning Commission should have denied the Use permit. I can't believe they did not accept the report's recommendation to deny the Use Permit.

I believe there are high risks of exposure to hazardous materials. It happened before right across the street and it could certainly happen again.

I was asked at the meeting if we have hazardous materials and I said no, but hazardous material have a wide definition. We are in the air conditioning business and do have new and used refrigeration oils and refrigerants as well as containment areas for these chemicals. We use qualified recycling and disposal companies and have permits with the City of Sunnyvale.

If the applicant hadn't appealed I certainly would have.

I did ask for and received some material in regard to hazardous materials from Ron Staricha your Hazardous Materials Project Administrator. I feel strongly that since this is the biggest issue Ron should be at the City Council Meeting on October 21, 2003.

My concerns with having a child care center in an industrial zone with hazardous materials are as follows:

- Potential limitations on industry's ability to expand or change the materials they are using in the future.
 - Additional regulatory overlays which may be imposed on industry after the child care center is established.
 - Limiting the potential to obtain tenants for sites in industrial zones adjacent to child care centers. As a result property values could decline.
 - The ability to obtain liability insurance or having insurance cancelled because of the presence of a child care center.
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Enclosed is a letter from the Santa Clara County Manufacturing Group which clearly states "allowing a non-industrial use in the midst of an industrial zone disrupts business as used, compromising the integrity of the industrial zone at a potentially significant expense to business." It also strongly recommends that cities should prohibit child care in industrial zone where hazardous materials are used with very limited exceptions. There is obviously also great risk to the health and safety of the children.

Also enclosed is a sheet which lists some of the relevant state statutes.

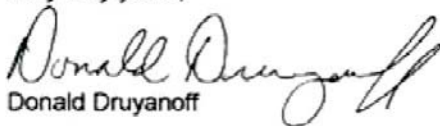
I am also concerned about parking. If this church and day care center are allowed to go forward their parking should be severely restricted and there is no way that 500 people should be allowed on that block. There is absolutely no where to park cars for that many people other than on the other people's property.

I bought my building in Sunnyvale and moved my company here from Cupertino and South San Francisco because I thought Sunnyvale was very business friendly and very pro business. If this Use Permit is approved it will obviously be very anti-business.

I also can't believe that Sunnyvale will risk the health and safety of children. A hazardous material release has occurred on that block very close to 435 Indio Way and it could happen again.

I respectfully request that the City Council follow the recommendation of the Project Planners report and deny the Use Permit.

Very truly yours,


Donald Druyanoff

Attachments

ATTACHMENT I

Buffer Distances for Hazardous Materials Use in Relevant State Statutes

Health & Safety Code Sec. 25534.1 (Re: RMPP Preparation)

Requires consideration of *proximity* of facility to schools, residential areas, hospitals, long-term health care facilities, and day care facilities. This Code does not define *proximity*. However, County Official Jim Blamey has indicated a day care center within **1 quarter mile (1,320 feet)** would trigger a required notice of an RMPP (Risk Management and Prevention Program) in Santa Clara County.

Health & Safety Code Sec. 42301.6 (Re: Hazardous Air Emission Permits)

Requires applicant within **1,000 feet** of a school to distribute a public notice of the permit application to parents or guardians of children enrolled in any school (K-12 public or private) within **1 quarter mile** and to each address within a radius of **1,000 feet**.

Health & Safety Code Sec. 42301.7 (Re: Threat of Air Contaminant Release)

Requires air pollution control officer to notify the administering agency having jurisdiction over a school within **1,000 feet** if there is a reasonably foreseeable threat of a release. Administrative agency may then require preparation of/or modification of an RMPP. Also provides provisions for air control officer to issue an immediate order to prevent the release or mitigate the release.

Public Resources Code Sec. 21151.8 (Re: School Siting & Construction)

Requires identification of facilities within **1 quarter mile** which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste and a finding that such a facility does not, and will not, constitute an actual or potential endangerment for approval of an environmental impact report or negative declaration for acquisition or construction of a school site.

Public Resources Code Sec. 21151.4 (Re: Environmental Impact Reports & Hazardous Materials)

Requires written notification to, and consultation with, the school district before approval of an environmental impact report or negative declaration for construction or alteration of a facility involving reasonable anticipation of air emission or handling of acutely hazardous materials within **1 quarter mile** of a school.

Health & Safety Code Sec. 25221 & 25232 (Re: Hazardous Waste Disposal Site)

Defines *hazardous waste property* as a site where a "significant disposal of hazardous waste has occurred", and a *border zone property* as one within **2,000 feet** of a hazardous waste property. Prohibits residences, hospitals, schools for persons under 21 years of age, day care, or any permanently occupied human habitation other than those used of industrial purposes on land that is designated a *hazardous waste property* or a *border zone property*.

County Hazardous Waste Management Plans (Required under AB 2948 (Tanner))

Siting criteria for Hazardous Waste Treatment Facilities mandated under the *Tanner Bill* require a **2,000 foot** buffer zone between an industrial transfer/storage/treatment facility and any immobile populations, such as schools, hospitals, convalescent homes, prisons, facilities for the mentally ill, etc.



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April 12, 1994

Tom Lewcock
City Manager
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

Re: SCCMG Guidelines for Siting Child Care Centers
in Industrial Zones

Dear Tom:

The Santa Clara County Manufacturing Group (SCCMG) is pleased to provide you with the attached SCCMG Guidelines for Siting Child Care Centers in Industrial Zones.

SCCMG has long supported the concept of providing child care in close proximity to employment centers. There are numerous examples of successful child care centers operating in and near industrial zones throughout Santa Clara County.

However, recent actions by several cities within the County have focused debate on the appropriateness of placing non-industrial uses, such as child care, within existing industrial zones. Specifically, local businesses raised the concern that such actions threaten the continued economic viability of the County's industrial areas.

In response, SCCMG initiated an effort to identify conditions under which child care and industry might coexist without jeopardizing the integrity of industrial zones. SCCMG has developed the attached Guidelines with significant input from local cities, regulatory agencies, industry and the development community.

SCCMG would appreciate if you would distribute these Guidelines to the members of the Council. We hope that you will give these recommendations serious consideration if and when this issue next arises within your city. We hope to meet with you soon to discuss the Guidelines in greater detail and address your comments.

Sincerely,

Gary Burke
President

Attachments

Attachment B

RECEIVED

APR 14, 1994

CITY MANAGER

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Santa Clara County Manufacturing Group
Guidelines for Siting Child Care Centers in Industrial Zones
April 7, 1994

Background

The Santa Clara County Manufacturing Group (SCCMG) has long supported the concept of providing child care in close proximity to employment centers. There are numerous examples of successful child care centers operating in and near industrial zones throughout Santa Clara County. However, recent actions by several cities within the County have focused debate on the appropriateness of granting conditional use permits and zoning variances to allow non-industrial uses, such as child care, within existing industrial zones. Local industries and developers have raised a number of issues that need to be addressed.

A wide range of local policies on this issue exists within the County. For example, Morgan Hill prohibits child care centers in both its light industrial and general industrial zones. Mountain View has adopted a temporary ordinance prohibiting child care centers and similar sensitive uses in industrial zones or within 1,000 feet of high-hazard facilities. This prohibition will remain in effect while they conduct a study to determine specific locations where such sensitive uses are appropriate. San Jose recommends against locating child care centers within close proximity to facilities that may affect the health and welfare of the children. San Jose encourages locating child care near employment provided that the surrounding businesses and industries would not adversely impact users of the center. Sunnyvale has drafted a policy that recommends allowing child care centers in industrial zones provided adequate consideration is given to protecting the health and welfare of those using the center.

Although these cities deal with protecting children, none addresses the critical issue of maintaining an economically viable industrial zone. In an effort to identify conditions under which child care and industry might coexist without jeopardizing the integrity of industrial zones, SCCMG convened an ad hoc committee with representation from local cities, regulatory agencies, industry and developers. As a result of the committee's discussions, SCCMG has drafted the following statement to define the issues, as well as recommended guidelines for local cities about how to address them.

Issues

Industrial zones were created to give industry a place to conduct business while minimizing the impacts that routine industrial operations typically pose to other members of the community. Allowing a non-industrial use in the midst of an industrial zone disrupts "business as usual," compromising the integrity of the industrial zone at a potentially significant expense to business.

For example, constructing a new or modifying an existing source of industrial air emissions requires compliance with stringent technological and permitting requirements, regardless of the neighborhood. If a "sensitive population" (BAAQMD

regulation 2-1-412, K-12 school children) is located within 1,000 feet of that source, however, the public notice requirements are considerably expanded. This will result in permitting delays, added costs, and even missed market opportunities if the delays are protracted. Parents' concerns about perceived health threats posed by the source could necessitate redesigning the project, also at increased expense and added time. Given the additional costs, administrative burdens and uncertainty, many businesses will simply choose not to expand in or relocate to an industrial zone that hosts a child care center.

Many environmental health and safety regulations have similar provisions that require special considerations and actions when a sensitive population is located close to an industrial operation (please see Attachment I). These requirements were designed to address industries moving into non-industrial areas, not the reverse situation we are experiencing in Santa Clara County.

The major focus has been on the risk of locating sensitive populations near facilities working with hazardous materials. (It is our understanding that for many of these materials, there is inconclusive data regarding increased negative impacts on sensitive populations under the routine exposure scenarios of an industrial zone.) We believe and the record supports that California's exceedingly stringent environmental and public health and safety regulations, especially when coupled with federal requirements, protect public health and the environment.

Industrial zones where hazardous materials are used do not provide a risk-free environment, especially in the case of transportation-related accidents where companies have little control. In emergency situations, a child care center located near a spill could pose a significant emergency response problem, given the children's lack of mobility. Industries near child care centers, the child care provider, the city and the local emergency response agencies should all share the responsibility for adequate education about and preparedness for such situations.

These issues are not unique to child care; they are equally applicable to other sensitive uses such as senior or handicapped care, schools, and even churches. Recent opposition to variance requests to allow churches in industrial zones has focused primarily on preserving industrial uses. However, in many cities, churches may, by right, establish school or day care operations without further city council approval or public input, an added reason for concern by surrounding businesses.

When a child care center is allowed in an industrial zone, businesses' concerns go well beyond the costs of compliance. In addition, these businesses must consider and address uncertainty about additional compliance requirements, the potential for increased insurance costs, increased liability and reduced industrial property values.

SCCMG believes that a non-industrial user moving into an industrial zone should bear the burden of mitigating these business impacts, exactly as industry must do in the reverse situation.

Recommendations

City Guidelines for Permitting of Child Care Centers:

1. Identify locations where child care may be appropriate and should be encouraged, possibly within office, commercial, retail, public facility or multi-family residential zones. Cities should particularly encourage child care on transit corridors that serve a large number of employees, such as sites near rail stations, freeway exits, county expressways and major arterials.
 2. Prohibit child care in industrial zones where hazardous materials are used, with very limited exceptions.
 3. Allow child care as a conditional use in an industrial zone only under the following conditions:
 - a) A company's on-site child care center, when the company owns all facilities within 1,000 feet and would commit to restrictions on the sale and future use of such facilities, or reconsideration of the child care center's permit if surrounding uses change.
 - b) When no facility within 1,000 feet uses hazardous materials, AND there is reasonable assurance there will be no such use. For example, if the center was located at the edge of an industrial area, and the only uses within 1,000 feet were other conditional uses or public facilities such as warehouse stores, municipal maintenance yards, etc.
 4. The city could choose to designate certain industrial zones, or portions thereof, for operations that do not involve hazardous materials use, and allow child care as a conditional use within that restricted area.
 5. Any time a child care center is proposed within 2,000 feet of an industrial zone, all property owners and tenants within 1,000 feet and all Treatment Storage or Disposal Facilities (TSDFs) within 2,000 feet should receive notification, to allow for response by affected businesses.
 6. If a child care center is considered in or adjacent to an industrial area, the following should be required:
 - a) The applicant must demonstrate that the risk to human health can be mitigated to a level of insignificance. This will require a detailed risk analysis, and evacuation and safety plans, all prepared by a qualified consultant. Prior to granting a use permit, the Environmental Impact Report or mitigated negative declaration must be approved by appropriate city/county/state hazardous materials staff. "Shelter in place" proposals must be able to demonstrate adequate protection from the maximum risk exposure potential.
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b) The applicant and city should sign waivers recognizing that the child care center is moving into an industrial zone where chemicals are being used. The waiver should further recognize that neither the applicant nor the city can prevent the use of those or other chemicals in the future, except as otherwise restricted by laws or ordinances governing the use of chemicals in industrial zones.

c) The city should set up a notification systems for assuring that nearby child care centers are promptly informed in the event of a hazardous materials release

d) The city and child care center should work with local industries to educate users of the center and other interested parties by providing informational materials and holding periodic workshops about commonly used hazardous materials and objective interpretation of risks posed, precautionary measures that can be taken and the emergency response plan for the particular center.

Attachment
